

# Cigarette Tax Recovery Trust Fund

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## Background

### Cigarette Tax Stamping Requirements

By law, distributors in Texas are required to affix cigarette tax stamps to individual unstamped packages of cigarettes within 96 hours of receipt. Cigarette distributors must obtain these tax stamps from the Texas Comptroller of Public Accounts prior to receipt or acceptance of the cigarettes.

### Distributor Stamping Allowance

For providing the service of affixing the tax stamps to cigarette packages, Texas distributors are entitled to receive a stamping allowance of 2.5 percent of the face value of the stamps.

Out-of-state distributors are entitled to receive only the same percentage of stamping allowance as that given to Texas distributors doing business in the home state of the out-of-state distributor.

If a distributor violates a provision of the Tax Code, Chapter 154, the distributor is not entitled to receive a stamping allowance for the period of the violation.

### Purchasing Cigarette Tax Stamps from the Comptroller

Payment for cigarette tax stamps must be made by electronic funds transfer to the Comptroller or by any other method of payment authorized by the Comptroller. The Comptroller will not ship cigarette tax stamps without advance payment unless the distributor is a participant in the Cigarette

Tax Recovery Trust Fund with an approved line of credit or has pledged sufficient collateral to secure payment for the tax stamps and meets any other conditions imposed by the Comptroller. Distributors must provide full payment for stamps

within 30 days after the date the stamps and an accompanying invoice from the Comptroller are received by the distributor, except that at the close of each biennium, the Comptroller must receive full payment for all stamps purchased or received on or before Aug. 31 of the fiscal year no later than Aug. 31 of the same fiscal year.



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## Cigarette Tax Recovery Trust Fund

*The Cigarette Tax Recovery Trust Fund is a private trust fund established outside the state treasury to secure the payment of cigarette taxes by distributors who contribute to the fund.*

In addition to any other requirements for shipping stamps without advance payment, the Comptroller may:

- require a fiscal-year-end financial statement, including a balance sheet and income statement verifiable as to its accuracy or other financial information acceptable to the Comptroller and verifiable as to its accuracy;
- require indemnification from each officer, director and stockholder owning 10 percent or more of outstanding stock, if the distributor is a corporation; from each partner, if the distributor is a partnership; from each member or owner, if the distributor is a joint venture or syndication; and from the owner, if the distributor is a sole proprietorship;
- require the distributor to obtain and provide the Comptroller with a credit report from a credit reporting agency acceptable to the Comptroller;
- require a distributor to increase the balance in its trust fund account;
- require a distributor to post an Irrevocable Letter of Credit;
- reduce a distributor's credit time or amount; or
- take any other reasonable and necessary action to protect the state from loss due to the nonpayment of cigarette taxes.

Additional information provided as a condition for shipping stamps without advance payment is confidential and not subject to the Government Code, Chapter 552.

### What is the Cigarette Tax Recovery Trust Fund?

The Cigarette Tax Recovery Trust Fund is a private trust fund established outside

the state treasury to secure the payment of cigarette taxes by distributors who contribute to the fund. The fund is composed of the total amount in the separate accounts maintained in trust for all contributing distributors. The assets of the fund, including interest earned by those assets, are to be held in trust for the benefit and protection of the state treasury, and may not be diverted, distributed, or appropriated for any purpose other than as provided by the Tax Code, Section 154.051.

The Comptroller is the trustee of the Cigarette Tax Recovery Trust Fund and manages the fund acting by and through the Texas Treasury Safekeeping Trust Company. The Comptroller receives 5 percent of the interest earned on all assets of the fund as compensation for serving as trustee of the fund. When investing the assets of the trust fund, the Comptroller has the obligations, duties and powers provided for this purpose by the Government Code, Sections 404.021 through 404.0245.

### Alternative to Participation in the Cigarette Tax Recovery Trust Fund

In lieu of participation in the Cigarette Tax Recovery Trust Fund or advance payment for cigarette tax stamps, a cigarette distributor may pledge to the Comptroller sufficient collateral to secure payment for the tax stamps. Such a pledge shall be evidenced by a pledge agreement in a form promulgated by the Comptroller. Collateral consists of certificates of deposit, treasury notes, treasury bills or other similar types of collateral acceptable to the Comptroller and held in a separate trust fund established in the Texas Treasury Safekeeping Trust Company. All interest earned on such

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collateral belongs to the distributor. If the Comptroller determines that the fair market value of the pledged collateral is less than the amount due for tax stamps, additional collateral may be required.

On written request of the distributor, the Comptroller shall release collateral from the pledge agreement or allow the substitution of collateral subject to the pledge agreement if, after such release or substitution, the fair market value of the collateral subject to the pledge will be equal to or greater than the

amount due the Comptroller for cigarette tax stamps. If a distributor fails to pay cigarette tax in full when due, the Comptroller may, if the distributor does not pay such past due tax and any penalty related thereto within three days after receipt of written notice of such failure from the Comptroller, sell or dispose of the collateral and apply the proceeds to the payment of taxes, interest, penalties and costs due the Comptroller by the distributor. Any remaining proceeds will be refunded to the distributor.

# Operating Guidelines

## Introduction

A distributor who orders cigarette tax stamps from the Comptroller without advance payment or pledged collateral must contribute its stamping allowance to a Cigarette Tax Recovery Trust Fund account maintained in the distributor's name. When the money in the distributor's trust fund account equals 20 percent of the designated line of credit approved by the Comptroller, the distributor's interest in the fund becomes vested.

Until a distributor acquires a vested interest in the trust fund, the Comptroller may require the distributor to post an Irrevocable Letter of Credit drawn in the form and amount specified by the Comptroller to secure the payment of cigarette taxes by the distributor. The Comptroller may not ship tax stamps to a distributor who does not have a vested interest in the trust fund or pledged collateral without advance payment

until the distributor posts the required letter of credit.

## Letter of Credit Requirements

When a letter of credit is chosen or required, the distributor must deliver the letter of credit to the Comptroller. Stamp purchases prior to the delivery of the letter of credit must be made on a cash basis or at the current level of available credit, based upon the amount in the distributor's trust fund account.

Letters of credit must be drawn on a bank that is a designated state depository under the Government Code, Section 404.022. The bank must be doing business in Texas and have a net equity and surplus greater than \$10,000,000. Each depository bank is subject to the approval of the Comptroller. A change in the financial condition of the depository bank may require the Comptroller to request the replacement of a distributor's letter of credit.

*A distributor who orders cigarette tax stamps from the Comptroller without advance payment or pledged collateral must contribute its stamping allowance to a Cigarette Tax Recovery Trust Fund account maintained in the distributor's name.*

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## Cigarette Tax Recovery Trust Fund

*The Comptroller distributes financial information regarding the performance of a participant's account in the trust fund on a monthly and quarterly basis.*

The letter of credit must be for an amount equal to the full amount of the credit requested.

The letter of credit must be irrevocable and cover a period of time estimated by the Comptroller to be sufficient to complete the distributor's vesting in the Cigarette Tax Recovery Trust Fund.

The Comptroller will send notice via registered mail to the distributor approximately 30 days prior to the expiration of the letter of credit. The distributor must renew the letter of credit or be restricted to the amount of available credit as determined by its trust fund account balance.

### Excess Reserve and Interest Earned on Trust Fund Assets

An "excess reserve" is any amount, regardless of source, that is present in the distributor's account over and above the reserve requirement. The common source of excess reserve is the stamping allowance accumulated from recent tax stamp purchases and investment earnings of the fund. Any excess reserve will be reported to vested distributors approximately 15 days after the end of the quarter. The excess reserve is automatically remitted 75 days later (i.e., 90 days after quarter end, or the last day of the following quarter).

Each vested distributor will pay an amount equal to 100 percent of the price of the stamps purchased by the due date when billed by the Comptroller. At the request of a distributor, the Comptroller will allocate any excess reserve to the distributor's account in the trust fund as the excess reserve accumulates. The distributor's account

balance (including accumulated excess reserve) will determine month by month the amount of credit available. Any stamp purchases beyond the allowable credit level must be made on a cash basis subject to the current stamping allowance.

On the last day of each quarter (of the state's fiscal year) after the quarter in which a distributor's account in the trust fund becomes vested, the Comptroller shall refund to the distributor all stamping allowance money contributed to the fund by the distributor in the earliest preceding quarter for which a refund has not been paid, plus interest earned on that amount, as long as the distributor's account in the fund remains vested.

### Financial Reports and Transaction Statements from the Comptroller

The Comptroller distributes financial information regarding the performance of a participant's account in the trust fund on a monthly and quarterly basis. The quarterly report contains all transactions pertaining to the participant's account, including notice of remittance of quarterly investment earnings, if any, accumulated stamping allowance, if any, and excess reserve amounts, if any.

On written request of a participating distributor, the Comptroller will provide the distributor with the name and address of each distributor participating in the fund, the percentage of the total fund represented by each distributor's account and the total amount of money in the fund.

### Financial Report Discrepancies

Fund participants must notify the Comptroller of any monthly or quarterly

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report discrepancies in the amounts reported or actions taken if the distributor disagrees with or disputes such action. Any such disputes will be resolved by the Comptroller within 30 days of receipt of notification.

### What Happens When a Participant Defaults

If a distributor who has an account in the trust fund fails to pay in full a tax imposed by the Tax Code, Chapter 154, by the due date, the Comptroller, without prior notice to the distributor or any other preliminary procedure, may seize any unaffixed stamps and any stamped cigarette packages, up to and including the full amount of unpaid tax. If the proceeds from the seizure do not satisfy the total tax deficiency or the Comptroller does not seize any unaffixed tax stamps or stamped cigarette packages, the Comptroller may withdraw immediately from the Cigarette Tax Recovery Trust Fund an amount equal to the amount of unpaid taxes due.

The Comptroller shall first withdraw the amount from the account of the defaulting distributor. The Comptroller uses its best efforts to collect the tax due from the defaulting distributor before withdrawing money from the other accounts in the fund to satisfy the tax liability. "Best efforts" in this context, is defined as the prudent, judicious steps executed with professional due care, in order to recover payment from a defaulting distributor prior to bankruptcy. During the first day of default, the taxpayer is contacted via telephone by Comptroller staff who request that the distributor send original payment (including the 2.5 percent discount extended to timely payments) immediately by wire or arrange

for immediate pickup by a field auditor. In the event the payment is not received that day, the Comptroller sends the distributor a written statement requesting the original payment (including the 2.5 percent discount extended to timely payments), plus a 5 percent penalty fee.

If the requested payment is not received, and the defaulting distributor's account does not contain sufficient money to satisfy the tax liability in full, the Comptroller shall withdraw the additional amount necessary to satisfy the liability from the other accounts in the fund in proportion to the balance of each account, except that the withdrawal from any other distributor's account in the fund is limited to an amount not greater than 50 percent of the designated amount of stamps requested by the distributor or of the amount required by the Comptroller.

Not later than the fifth day after the date of a withdrawal, the Comptroller shall notify each distributor of the withdrawal from its account and the amount withdrawn. If, as a result of a withdrawal, a distributor's balance in its account is reduced to an amount less than the minimum required, the distributor's interest in the fund is no longer vested, and the Comptroller may discontinue refunds to the distributor until the distributor again acquires a vested interest in the fund. The Comptroller may require a distributor whose interest in the fund is no longer vested to post an Irrevocable Letter of Credit with the Comptroller to secure the payment of cigarette taxes by the distributor. To protect the fund, each distributor having an account in the fund must indemnify the fund against any amount withdrawn from the fund because of the failure of the distributor

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## Cigarette Tax Recovery Trust Fund

to pay in full a tax imposed by Tax Code, Chapter 154, by the due date.

### Claims Against a Defaulting Participant

If distributor accounts are drawn, each affected nondefaulting distributor shall have a claim against the defaulting distributor for the amount drawn. The Comptroller is hereby appointed trustee, agent and assignee of each affected, nondefaulting distributor for the purpose of seeking recovery of the amount drawn. The Comptroller shall have the sole judgment and discretion in deciding whether or not to pursue such a claim and shall have discretion to handle any such claim on any basis that in the opinion of the Comptroller is in the best interest of the trust fund. The Comptroller is released from any liability related to the handling of these claims, except for in the case of intentional or willful misconduct.

### Closing a Trust Fund Account

A distributor or person authorized to act on behalf of a distributor may notify the Comptroller in writing that the distributor no longer desires to have tax stamps shipped without advance payment, and may request that the money in the distributor's trust fund account be paid to the distributor or the distributor's heirs or assigns. The Comptroller shall pay the money in the distributor's account as requested at the end of the next quarter after all outstanding taxes owed to the state by the distributor have been paid.

Under no circumstances shall the Comptroller return to any distributor an amount greater than the balance in the distributor's trust fund account less any sums drawn. The state of Texas' liability to any distributor is expressly limited to the sums on deposit in the distributor's account at the time the request for return of funds is made.

*To request the Texas Application for Membership into the Cigarette Tax Recovery Trust Fund (Form AP-187) call the Texas State Comptroller's office at 1-800-862-2260.*

## Establishing a Cigarette Tax Recovery Trust Fund Account

### Application for Membership

To request the Texas Application for Membership into the Cigarette Tax Recovery Trust Fund (Form AP-187) call the Texas State Comptroller's office at 1-800-862-2260. The local number in Austin is 512-463-3731.

You may send your request via fax to 512-936-0019 or write us at:

Comptroller of Public Accounts  
Account Maintenance Division  
111 East 17th Street  
Austin, Texas 78774-0100

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## Credit Determination Procedures

The procedure for obtaining a line of credit with the Comptroller is as follows.

1. The distributor requests that a specific maximum dollar amount of credit be extended by the Comptroller.
2. The Comptroller reviews the request, and if the request is approved, calculates the vesting amount required. This amount is called the “reserve requirement.” The minimum reserve requirement is 20 percent of the credit amount requested. The Comptroller may establish the initial reserve requirement at a percentage in excess of 20 percent or may subsequently increase the reserve requirement without advance notice as a condition for shipping cigarette tax stamps.
3. The Comptroller notifies the distributor of the amount of the distributor’s reserve requirement.
4. Before credit is extended, the distributor must execute an agreement with the Comptroller to participate in the Cigarette Tax Recovery Trust Fund and choose one of the vesting options described below.

## Vesting Options

To obtain a vested interest in the Cigarette Tax Recovery Trust Fund, a distributor may:

- post a cash deposit in an amount not less than 20 percent of the amount of credit approved; or
- provide the Comptroller with an Irrevocable Letter of Credit payable to

the Comptroller. The letter of credit must be made for a term of at least six months; be in an amount equal to 100 percent of the amount of credit approved; be drawn on a Texas State Depository Bank; and be in a form acceptable to the Comptroller; or

- pay cash for the full face value of tax stamps purchased and allow the current stamping allowance to accrue until it equals the vested amount of not less than 20 percent of the amount of credit approved.

A distributor does not become vested until the distributor has the reserve requirement deposited in its account. Any distributor in the process of vesting is considered “partially vested.”

## Vesting Procedures

Once a distributor has chosen a vesting option, it follows the appropriate procedure below to obtain a vested interest in the trust fund.

### • Cash Deposit

The distributor makes an immediate cash deposit to its trust fund account, sufficient to establish the reserve requirement within 10 days of receipt of notice from the Comptroller.

### • Irrevocable Letter of Credit

The distributor delivers an Irrevocable Letter of Credit to the Comptroller. At the end of each quarter, an analysis of the distributor’s account is completed. When the account balance meets or exceeds the reserve requirement, vesting is completed, the letter of credit is released and the distributor has the credit line requested.

*Once a distributor has chosen a vesting option, it follows the appropriate procedure to obtain a vested interest in the trust fund.*

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## Cigarette Tax Recovery Trust Fund

- **Stamping Allowance/Interest Accumulation**

The distributor pays for stamps with cash at 100 percent of the cost of the stamps and the distributor's stamping allowance is deposited into its trust fund account, accumulating the reserve requirement over an extended time period.

The distributor may be extended credit in relation to the total deposited

in its trust fund account after each quarterly analysis. Interest earned on the accumulated stamping allowance is also invested in the distributor's reserve requirement. At any point, the distributor may elect to satisfy the reserve requirement with a cash deposit or a letter of credit, or the distributor may decline further participation in the trust fund.

## We're Here To Help! *Call Toll-Free!*

If you have questions or need information on a specific tax, please call our toll-free numbers:

### 1-800-252-5555

911 Emergency Service/Equalization Surcharge  
Automotive Oil Fee  
Battery Fee  
Boat and Boat Motor Sales Tax  
Customs Broker  
Fireworks Tax  
Mixed Beverage Tax  
Off-Road, Heavy-Duty Diesel Equipment Surcharge  
Oyster Fee  
Sales and Use Taxes  
Telecommunications Infrastructure Fund

### 1-800-531-5441

Cement Tax  
Inheritance Tax  
Local Revenue  
Miscellaneous Gross Receipts Taxes  
Oil Well Servicing Tax  
Sulphur Tax

### 1-800-531-5441, ext. 3-3630

WebFile Help

### 1-800-252-1381

Bank Franchise  
Franchise Tax

### 1-800-252-7875

Spanish

### 1-800-531-1441

Fax on Demand (Most frequently requested Sales and Franchise tax forms)

### 1-800-252-1382

Clean Vehicle Incentive Program  
Manufactured Housing Tax  
Motor Vehicle Sales Surcharge,  
Rental and Seller Financed Sales Tax  
Motor Vehicle Registration Surcharge

### 1-800-252-1383

Fuels Tax  
IFTA  
LG Decals  
Petroleum Products Delivery Fee  
School Fund Benefit Fee

### 1-800-252-1384

Coastal Protection  
Crude Oil Production Tax  
Natural Gas Production Tax

### 1-800-252-1387

Insurance Tax

### 1-800-252-1385

Coin Operated Machine Tax  
Hotel Occupancy Tax

### 1-800-252-1386

Certificates of Account Status/Good Standing  
Officer and Director Information

### 1-800-862-2260

Cigarette and Tobacco

### 1-888-4-FILING (1-888-434-5464)

TELEFILE: To File by Phone

### 1-800-252-1389

GETPUB: To Order Forms and Publications

### 1-800-654-FIND (1-800-654-3463)

Treasury Find

### 1-800-321-2274

Unclaimed Property Claimants  
Unclaimed Property Holders  
Unclaimed Property Name Searches  
512-463-3120 in Austin

### 1-877-44RATE4 (1-877-447-2834)

Interest Rate

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